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No. 595

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In the

SUPREME COURT OF THE UNITED STATES

EDGAR PHARR,
d/b/a Madisonville Cab Co.,
Petitioner,

vs.

BUREAU OF UNEMPLOYMENT COMPENSATION,
STATE OF OHIO,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF OHIO

HARRY A. ABRAMS
Attorney for Petitioner
2112 Carew Tower
Cincinnati, Ohio 45202

ON THE PETITION:
STEPHEN W. YOUNG

COURT INDEX PRESS, INC. — Law Printers — 609 Walnut Street, Cincinnati, Ohio 45202

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In the

Supreme Court of the United States

No. ———

EDGAR PHARR,
d/b/a Madisonville Cab Co.,
Petitioner,

vs.

BUREAU OF UNEMPLOYMENT COMPENSATION,
STATE OF OHIO,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF OHIO

The petitioner prays that a writ of certiorari issue to review the judgment of The Supreme Court of Ohio entered on June 27, 1966.

CITATIONS TO OPINIONS BELOW

The Court of Common Pleas of Hamilton County, Ohio did not render a written opinion. The oral rulings of that Court are set out in the original Bill of Exceptions which is a part of the certified transcript. The opinion of the Hamilton County, Ohio, Court of Appeals is unreported and is printed in Appendix B, infra, p. 19. The opinion of The Supreme Court of Ohio is unreported and is printed in Appendix B, infra, p. 17.

JURISDICTION

The judgment of the Supreme Court of Ohio was entered on June 27, 1966. No rehearing was requested. The jurisdiction of the Court is invoked under 28 U.S.C., Section 1257 (3).

STATE STATUTES INVOLVED

The statutory provisions involved are Sections 4141.26 and 4141.27 of The Ohio Revised Code. They are printed in Appendix A, infra, p. 10 through p. 15, respectively.

QUESTIONS PRESENTED

1. Is the right to a trial by jury guaranteed by the Seventh Amendment such a fundamental principle of liberty and justice as to be made obligatory upon the States by The Fourteenth Amendment?

2. Was the petitioner denied due process of law as guaranteed in the Fourteenth Amendment by the refusal of the state court, to allow submission of petitioner's liability for unemployment taxes to a jury in a civil action at law against petitioner to collect said taxes, (the amount thereof being in excess of $3000.00)?

HOW FEDERAL QUESTION PRESENTED

The petitioner, defendant in the action in the Hamilton County, Ohio Common Pleas Court, demanded a jury trial on the issue as to whether petitioner was an "employer" within the meaning of The Ohio Unemployment Act, for the reason that the suit, being one for an amount at law exceeding of $20.00, petitioner was entitled to a jury trial under the Constitutions of The State of Ohio and of the United States. The trial court refused that demand.

Petitioner appealed to the Hamilton County, Ohio Court of Appeals on the denial of petitioner's constitutional right, and that Court affirmed.

Petitioner then appealed to the Supreme Court of Ohio on the ground that a substantial constitutional question was involved.

That Court, on June 27, 1966, under its Rule II, Section 3 (B), printed in Appendix A, infra, pgs. 15-16, dismissed said appeal "for the reason that no substantial constitutional question exists herein."

STATEMENT

The Bureau of Unemployment Compensation, of the State of Ohio brought suit against petitioner in the Hamilton County Ohio Common Pleas Court praying for judgment in the amount of $3022.92 on the ground that petitioner had failed to pay unemployment taxes to the Bureau. The case was filed under the provisions of Section 4141.27, Ohio Revised Code.

Petitioner filed an answer incorporating as a First Defense, a general denial, and as a Third Defense, that petitioner was not an "employer" within the meaning of the Ohio Unemployment Act.

When the cause came on for trial, petitioner requested a jury and a jury was empaneled, but before any evidence was introduced, the Common Pleas Court ruled that petitioner could not submit any evidence under either his First or Third Defense to attempt to prove that he was not an "employer" and, therefore, not liable for the taxes sued for.

The trial judge based his ruling on the fact that petitioner, prior to the filing of the action at law against him under Section 4141.27, Ohio Revised Code, had appealed under Section 4141.26, Ohio Revised Code, to the Franklin

County, Ohio Court of Common Pleas, a ruling of the Bureau of Unemployment Compensation that petitioner owed certain such Unemployment Taxes, that said ruling had been affirmed by said Court, and affirmed on appeal to the Franklin County, Ohio Court of Appeals, and a motion to certify overruled by the Supreme Court of Ohio on February 15, 1961.

The trial court ruled that the cause could proceed to trial only on the issue of the amount, if any, due.

Petitioner excepted to the ruling and then withdrew his demand for a jury trial, pointing out that the defenses he could present had been ruled out by the court.

Respondent introduced its findings showing determinations as to amounts due and rested. Petitioner, attempted to introduce evidence to show that he was not an "employer", but the court ruled that the court's previous rulings prohibited any dispute of that issue.

Judgment was thereupon entered in favor of respondent against petitioner.

Thereafter, petitioner appealed to the Hamilton County, Ohio Court of Appeals on the constitutional question that he had been denied a trial by jury as guaranteed by the Ohio Constitution and United States Constitution. The Court of Appeals affirmed. Petitioner then appealed to the Supreme Court of Ohio on the ground that there was a substantial constitutional question involved. That Court dismissed the appeal on the ground that no substantial Constitutional question was involved.

Petitioner did not request a rehearing.

REASONS FOR GRANTING THE WRIT

In recent years, the Supreme Court has been reexamining previous decisions of the Court involving the extent to which certain fundamental rights, safeguarded by the

first eight amendments of The Constitution of The United States against federal action, are also safeguarded against state action by the due process of law clause of the Fourteenth Amendment. *Hamilton* v. *Alabama,* 368 U.S. 52; *Gideon* v. *Wainwright,* 375 U.S. 335; *Malloy* v. *Hogan,* 378 U.S. 4.

In *Gideon,* the Court, quoting Mr. Justice Cardozo, said "immunities that are valid as against the federal government by force of the specific pledges of particular amendments have been formed to be implicit in the Concept of ordered liberty, and thus, through the Fourteenth Amendment, become valid as against the states . . ."

We submit that the guarantee of the Seventh Amendment expresses a rule so fundamental and essential to a fair trial, that denial of that right by the states is a denial of due process of law under the Fourteenth Amendment.

Legal consistency require the Court to extend the same protection to "property" that it has given to "life" and "liberty".

ARGUMENT

Question 1.

Is the right to a trial by jury guaranteed by the Seventh Amendment such a fundamental principle of liberty and justice as to be made obligatory upon the States by The Fourteenth Amendment?

This Court should answer this question in the affirmative.

In its continuing extent of the application of reexamination of the Fourteenth Amendments' due process of law clause upon the first eight amendments in relation to state action, the Court has decided that the guarantees of the

Bill of Rights are applicable to state action. Justice Black, in his opinion in *Gideon* v. *Wainwright,* 375 U.S. 335, referred to many such previous decisions.

In *Gideon,* the Court, in extending the protection of the Sixth Amendment, to non-capital cases, pointed out that the Fourteenth Amendment requires due process of law for the deprival of "liberty" just as for the deprival of "life".

The Fourteenth Amendment also requires due process of law for the deprival of "property", and the mere fact that "property" is listed third does not mean that property is therefore beyond the pole of constitutional protection against state action.

Especially is this true when a defendant is sued by a state for alleged unpaid taxes? All of the persons arrayed against the defendant including the judges are, as in a criminal prosecution, paid officials of the state, and have in effect an interest or stake in seeing that the issues are resolved against the defendant.

The presentation of the issues to a jury represents the only way in which the defendant can receive a fair trial that embodies those fundamental principles of liberty and justice which lie at the base of all our civil and political institutions.

An action at law for a money judgment is certainly a "state action."

Logic and consistency indicate that the protection of the Seventh Amendment should be extended to state action under the due process clause.

Question 2.

Was the petitioner denied due process of law as guaranteed in the Fourteenth Amendment by the refusal of the state court, to allow submission of petitioner's liability for unemployment taxes to a jury in a civil action at law against petitioner to collect said taxes, (the amount thereof being in excess of $3000.00)?

This Court should answer in the affirmative.

It is self-evident that a jury trial is a necessary part of due process.

An apt quotation appears in 31 American Jurisprudence, Section 15, page 22.

> "The constitutional guaranty of trial by jury is limited to the determination of *controverted issues* fact." (Italics supplied.)

The section of Ohio law, O.R.C. Sec. 4141.27, by its very terms, made the findings of respondent Bureau only "prima-facie evidence of the facts therein contained." That section provides for an answer by the defendant and further that:

> "If upon the final hearing of said cause it is determined that the defendant is subject to sections 4141.01 to 4141.46, inclusive, of the Revised Code, the court shall render judgment against said defendant for the amount of contribution provided to be paid by such employer for such period, with interest and costs, which judgment shall be given the same preference as is allowed by law to judgments given the same preference as is allowed by law to judgments rendered for claims for taxes."

Thus, the very statute under which the state's action was brought makes the issue whether or not the defendant

is an "employer" within the meaning of the act and this very defense, raised by the petitioner in his answer, was withdrawn before trial from consideration by the jury. This effectively left no issue for the jury and petitioner had no option except to proceed without the jury.

The trial court based its denial of petitioner's said defense on that ground petitioner had appealed a finding of the respondent Bureau under the provisions of Ohio Revised Code, Section 4141.26, *"Rates of Contribution,"* and that, on review, said finding had been upheld.

For the convenience of the Court, a copy of one of respondent's findings is printed in Appendix B, infra, pgs. 24, 25.

The law of Ohio in no way makes the findings of the Bureau a final determination in the action to collect those contributions in a suit at law. Not only does O.R.C. Section 4141.27 provide for such a civil action and trial of the issue as to whether the defendant therein is subject to the act but the Supreme Court of Ohio has ruled that the place and manner of presenting such a divorce is in a court of law when the alleged employer is sued under the provisions of O.R.C. Section 4141.27 (formerly Ohio General Code Section 1345.28). In *Iden* v. *Atkinson, Administrator,* 138 O.S. 175, a beauty parlor operator sought to prohibit the Bureau of Unemployment Compensation from making a levy of contributions on the ground that the alleged employees were not in fact employees. The Supreme Court held that the beauty parlor operator had an adequate remedy in that if an action should be instituted against him for collection of the contributions, he could assert his defense that the individuals in question are not employees. The Court went on to say:

"This is illustrated by the language of Section 1345-28, General Code (now Section 4141.27, Ohio Revised

Code) that 'if upon final hearing of said cause it is found and determined that the defendant is subject to the provisions of this act, the Court shall render judgment . . .' Thus the question whether this Plaintiff is an employer of three or more individuals can be effectively adjudicated in a Court of law."

CONCLUSION

This case brings before the Court a situation in which a petitioner sued by a state agency in an action at common law has been effectively deprived of the protection of due process of law in having been denied a trial by jury. No reasons exist for not extending to citizens whose property is to be taken by the state similar constitutional protection the Court has extended to accused in criminal causes. The petition should therefore be granted.

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2112 Carew Tower
Cincinnati, Ohio 45202

ON THE PETITION:
STEPHEN W. YOUNG

APPENDIX A

OHIO REVISED CODE

Sec. 4141.26 Appeal from contribution rate.

As soon as practicable after the first day of October but not later than the first day of January of the ensuing calendar year, the administrator of the bureau of unemployment compensation shall notify each employer of his contribution rate as determined for the next ensuing contribution period pursuant to section 4141.25 of the Revised Code, provided the employer has furnished the bureau of unemployment compensation, by the thirtieth day of September following the computation date, with the wage information for all past periods necessary for the computation of the contribution rate. If the employer has not furnished the necessary wage information, then his contribution rate for such contribution period shall be the maximum rate provided in such section.

Such rate shall become binding upon the employer unless, within thirty days after the mailing of notice thereof to his last known address or, in the absence of mailing of such notice, within thirty days after the delivery of such notice, the employer files an application with the administrator for reconsideration of the administrator's determination of such rate setting forth his reasons for such request. The administrator shall promptly examine the application for reconsideration and shall notify the employer of his reconsidered decision which shall become final unless within thirty days after mailing of such notice, the employer files an application for review of such decision with the board of review. The board shall promptly examine the application for review of the administrator's decision and shall grant such employer an opportunity for a fair hearing.

The proceeding at the hearing before the board shall be recorded in the means and manner prescribed by the board.

The employer and the administrator shall be promptly notified of the board's decision which shall become final unless within thirty days after the mailing of notice thereof to the employer's last known address or, in the absence of mailing, within thirty days after delivery of such notice, an appeal is taken by the employer or the administrator to the court of common pleas of Franklin county. Such appeal shall be taken by the employer or the administrator by filing a notice of appeal with the clerk of such court and with the board. Such notice of appeal shall set forth the decision appealed from and the errors therein complained of. Proof of the filing of such notice with the board shall be filed with the clerk of such court.

In such appeal no additional evidence shall be received by the court but the court may order additional evidence to be taken before the board, and the board shall, after hearing such additional evidence, certify such additional evidence to the court or it may modify its determination and file such modified determination, together with the transcript of the additional record, with the court. After an appeal has been filed in the court, the board may, by petition, be made a party to such appeal. Such appeal shall be given precedence over other civil cases. An appeal may be taken from the decision of the court of common pleas of Franklin county.

This section applies to all other determinations and orders of the administrator affecting the liability of an employer to pay contributions or the amount of such contributions, determinations respecting application for refunds of contributions, determinations respecting applications for classification of employment as seasonal under section 4141.33 of the Revised Code, and exceptions to charges of

benefits to an employer's account as provided in division (D) of section 4141.24 of the Revised Code.

The validity of any general order, rule, or regulation of the administrator or of any final order or action of the unemployment compensation board of review respecting any such general order, rule, or regulation may be determined by the court of common pleas of Franklin county, and such general order, rule, regulation, or action may be sustained or set aside by the court on an appeal thereto which may be taken by any person affected thereby in the manner provided by law. Such appeal to the court of common pleas of Franklin county shall be filed within thirty days from the date such general order, rule, regulation, or action was publicly released by the administrator or the board. Either party to such action may appeal from the court of common pleas of Franklin county as in ordinary civil cases.

Notwithstanding any determination made in pursuance of sections 4141.23 to 4141.26, inclusive, of the Revised Code no individual who files a claim for benefits shall be denied the right to a fair hearing as provided in section 4141.28 of the Revised Code, or the right to have his claim determined on the merits thereof.

OHIO REVISED CODE

Sec. 4141.27 Proceeding against employer who fails to comply.

If the administrator of the bureau of unemployment compensation finds that any person, firm, corporation, or association is, or has been, an employer subject to sections 4141.01 to 4141.46, inclusive, of the Revised Code, and has failed to comply with such sections, such administrator shall determine the period during which he or it was such an

employer, which finding and determination is for all purposes of such sections prima-facie evidence thereof. The administrator shall forthwith give notice of said action to the employer who shall immediately thereafter furnish the administrator with a payroll covering the period included in said finding, and shall forthwith pay the amount of contribution determined and fixed by the administrator.

If said employer fails to furnish such payroll and pay the contribution for such period within ten days after receiving such notice, the administrator shall then determine the amount of contribution due from said employer for the period the administrator found him or it to be subject to sections 4141.01 to 4141.46, inclusive, of the Revised Code, including interest, and shall notify said employer of the amount thereof and shall order it to be paid. If said amount is not paid within ten days after receiving notice, the administrator shall certify his finding relative to such employer to the attorney general, who shall forthwith institute a civil action against such employer in the name of the state for the collection of such contribution and interest. In such action it is sufficient for the Plaintiff to set forth a copy of such finding as certified by the administrator to the attorney general and to state that there is due to plaintiff on account of such finding a specified sum which plaintiff claims with interest. A certified copy of such finding shall be attached to the petition and is prima-facie evidence of the truth of the facts therein contained. The answer or demurrer to such petition shall be filed within ten days, the reply or demurrer to the answer within twenty days, and the demurrer to the reply within thirty days after the return day of the summons or service by publication. All motions and demurrers shall be submitted to the court within ten days after they are filed. As soon as the issues

are made up in any such case, it shall be placed at the head of the trial docket and shall be first in order of trial.

Unless said employer before the filing of the petition executes a bond to the state in double the amount so found and ordered paid by the administrator, with sureties to the approval of the administrator, conditioned that he or it shall pay any judgment and costs rendered against him or it for said contribution, the court at the time of the filing of the petition, without notice, shall appoint a receiver for the property and business of such employer in this state, with all the powers of receivers in other cases, who shall take charge of all said property and assets of the defendant and administer them under the orders of the court.

If upon the final hearing of said cause it is determined that the defendant is subject to sections 4141.01 to 4141.46, inclusive, of the Revised Code, the court shall render judgment against said defendant for the amount of contribution provided to be paid by such employer for such period, with interest and costs, which judgment shall be given the same preference as is allowed by law to judgments rendered for claims for taxes.

If any employer who has complied with such sections defaults in any payment required to be made by him or it for a period of ten days after notice that such payment is due, the same proceedings may be had as in the case of an employer against whom the administrator has made a finding as provided in this section.

If the defendant is a nonresident of this state or a foreign corporation doing business in this state, service of summons may be made upon any agent, representative, or foreman of said defendant, wherever found in the state, or service may be made in any other manner authorized by statute.

The administrator, for good cause shown, may waive a default in the payment of contributions when said default is less than sixty days' duration.

SUPREME COURT OF OHIO

RULES OF PRACTICE

April 26, 1965

RULE I.

NOTICE OF APPEAL.

Section 1. From Court of Appeals.

(A) The notice of appeal from a Court of Appeals must be filed in the court from which the case is appealed within twenty days in a civil case (Section 2505.07, Revised Code) and within thirty days in a criminal case (Section 2953.05, Revised Code) from the entry of the judgment or final order appealed from and shall set forth:

(a) The order or judgment appealed from, and

(b) Whether the case originated in the Court of Appeals, and

(c) Whether the case involves a substantial constitutional question.

(B) * * *

RULE II.

DETERMINATION OF JURISDICTION ON APPEALS FROM COURTS OF APPEALS

Section 1. * * *

Section 2. * * *

Section 3. Consideration as to Existence of Constitutional Question.

Appendix A

(A) If an appellant contends that a case involves a substantial constitutional question and also contends that such case is of public or great general interest, it is necessary to file only one notice of appeal. (See Rule I (A) (a) and (c).)

(B) Where appellant claims that he has an appeal as of right (i. e., that the case involves a constitutional question), the Supreme Court will sua sponte consider the case as on a motion to dismiss said appeal as one not involving any substantial constitutional question and will consider such motion to dismiss at the same time that it considers any motion to certify or motion for leave to appeal in the case.

APPENDIX B

THE SUPREME COURT OF THE STATE OF OHIO
1966 Term

To wit: Wednesday, June 15, 1966

No. 40092

THE STATE OF OHIO,
City of Columbus,
Bureau of Unemployment Compensation, State of Ohio,
Plaintiff-Appellee,

vs.

Edgar Pharr,
Defendant-Appellant

APPEAL FROM THE COURT OF APPEALS
(for Hamilton County)

(Filed, Court of Appeals, June 29, 1966.)

This cause, here on appeal as of right from the Court of Appeals for Hamilton County, was heard in the manner prescribed by law, and, no motion to dismiss such appeal having been filed, the Court sua sponte dismisses the appeal for the reason that no substantial constitutional question exists herein.

It is further ordered that the appellee recover from the appellant its costs herein expended; that a mandate be sent to the Court of Common Pleas to carry this judgment into execution; and that a copy of this entry be certified

to the Clerk of the Court of Appeals for Hamilton County for entry.

I, Thomas L. Startzman, Clerk of the Supreme Court of Ohio, certify that the foregoing entry was correctly copied from the Journal of this Court.

Witness my hand and the seal of the Court this day of June 27, 1966.

THOMAS L. STARTZMAN, Clerk
SAM F. ADKINS, Deputy

IN THE COURT OF APPEALS
For Hamilton County, Ohio

No. 9745

BUREAU OF UNEMPLOYMENT COMPENSATION, STATE OF OHIO,
Plaintiff-Appellee,

vs.

EDGAR PHARR,
Defendant-Appellant.

NOTICE OF APPEAL
(Filed February 10, 1966.)

Now comes the Appellant and hereby gives notice of his appeal on questions of law to The Supreme Court of Ohio from the judgment and final order rendered and entered on the 21st day of January, 1966.

Appendix B

This appeal is taken to The Supreme Court on the grounds that a substantial constitutional question is involved, and that the case is one of public and great general interest.

/s/ STEPHEN W. YOUNG
Attorney for Appellant
2213 Carew Tower
Cincinnati, Ohio 45202

IN THE COURT OF APPEALS
First Appellate District of Ohio

Hamilton County, No. 9745

BUREAU OF UNEMPLOYMENT COMPENSATION,
Plaintiff-Appellee,

vs.

EDGAR PHARR,
Defendant-Appellant.

Appeal on Questions of Law From Court of Common Pleas
Hamilton County, Ohio

OPINION

Messrs. William B. Saxbe and Arthur J. Reid, for Plaintiff-Appellee.

Stephen W. Young, for Defendant-Appellant.

Appendix B

PER CURIAM.

An examination of the record discloses no error prejudicial to the rights of Appellant. The judgment of the Court of Common Pleas, Hamilton County, Ohio, is, therefore, affirmed.

HILDEBRANT, P. J., LONG and HOVER, J.J., concur.

It is further ordered that a special mandate be sent to the Common Pleas Court of Hamilton County, Ohio, for execution upon this judgment. To all of which Appellant, by his counsel, excepts.

STEPHEN W. YOUNG
Attorney at Law
STEPHEN W. YOUNG
Attorney for Defendant-
Appellant

WILLIAM B. SAXBE
Attorney General
ARTHUR J. REID, JR.
Assistant Attorney General
Attorneys for Plaintiff-Appellee

Appendix B

IN THE COMMON PLEAS COURT
Hamilton County, Ohio

No. A-182360

BUREAU OF UNEMPLOYMENT COMPENSATION, STATE OF OHIO

Plaintiff,

vs.

EDGAR PHARR,

Defendant.

JOURNAL ENTRY

This matter having come on for hearing on the Petition of the Plaintiff, and answer of the Defendant, the matter having been fully tried by the Court on the evidence of both parties.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that the Plaintiff have a judgment against the Defendant in the amount of $3,022.25 plus interest from October 31, 1954 to April 30, 1965 in the amount of $1,090.24 (total amount of judgment $4,112.49 plus interest), and costs expended herein. All of which is detailed on attached Exhibit "A".

.....
Judge

Approved:
WILLIAM B. SAXBE
Attorney General

ARTHUR J. REID
Assistant Attorney General
Bureau of Unemployment Compensation
Cincinnati, Ohio 45214

Appendix B

CERTIFICATION

No. 11	July	–	Sept.	1954	$ 55.17	– .28	int.	from	Oct. 31,	1954	$34.72
	Oct	–	Dec.	1954	70.27	– .35	"	"	Jan. 31,	1955	43.40
	Jan.	–	Mar.	1955	80.82	– .40	"	"	Apr. 30,	1955	48.00
	Apr.	–	Jun	1955	65.90	– .33	"	"	Jul. 31,	1955	38.60
	Jul.	–	Sept.	1955	56.73	– .28	"	"	Oct. 31,	1955	31.92
	Oct.	–	Dec.	1955	81.09	– .40	"	"	Jan. 31,	1956	44.80
No. 12	Jan.	–	Mar.	1956	83.17	– .42	"	"	Apr. 30,	1956	45.36
	Apr.	–	Jun.	1956	70.51	– .35	"	"	Jul. 31,	1956	36.40
	Jul.	–	Sept.	1956	64.00	– .32	"	"	Oct. 31,	1956	32.64
	Oct.	–	Dec.	1956	80.61	– .40	"	"	Jan. 31,	1957	40.00
	Jan.	–	Mar.	1957	84.08	– .42	"	"	Apr. 30,	1957	40.32
	Apr.	–	Jun.	1957	69.31	– .35	"	"	Jul. 31,	1957	32.55
	Jul.	–	Sept.	1957	62.48	– .31	"	"	Oct. 31,	1957	27.90
	Oct.	–	Dec.	1957	94.92	– .47	"	"	Jan. 31,	1958	40.89
	Jan.	–	Mar.	1958	91.13	– .45	"	"	Apr. 30,	1958	37.80
	Apr.	–	Jun.	1958	85.26	– .43	"	"	Jul. 31,	1958	34.83
No. 13	Jul.	–	Sept.	1958	88.40	– .44	"	"	Oct. 31,	1958	34.32
	Oct.	–	Dec.	1958	137.21	– .64	"	"	Oct. 31,	1959	42.24
	Jan.	–	Mar.	1959	156.52	– .78	"	"	Apr. 30,	1959	46.80
No. 14	Apr.	–	Jun.	1959	158.51	– .79	"	"	Jul. 31,	1959	54.51
	Jul.	–	Sept.	1959	172.56	– .86	"	"	Oct. 31,	1959	56.76
	Oct.	–	Dec.	1959	170.67	– .85	"	"	Jan. 31,	1960	53.55
	Jan.	–	Mar.	1960	165.29	– .83	"	"	Apr. 30,	1960	49.80
No. 777	Apr.	–	Jun.	1960	165.97	– .83	"	"	Jul. 31,	1960	47.21
	Jul.	–	Sept.	1960	157.69	– .79	"	"	Oct. 31,	1960	42.66
	Oct.	–	Dec.	1960	144.50	– .72	"	"	Jan. 31,	1961	36.72
No. 1980	Oct.	–	Dec.	1961	52.63	– .26	"	"	Jan. 31,	1962	10.14
	Jan.	–	Mar.	1962	29.64	– .15	"	"	Apr. 30,	1962	5.40
									TOTAL		$1,090.24

Certification No. 11	$ 450.98	
12	864.02	
13	420.34	
14	679.40	
777	468.16	
778	46.82	
1980	92.53	
	$3,022.25	Total contributions and penalties
	1,090.24	Interest to 4/30/65
	$4,112.49	Total judgment

Appendix B

IN THE COMMON PLEAS COURT
Hamilton County, Ohio

No. A-182360

BUREAU OF UNEMPLOYMENT COMPENSATION,
STATE OF OHIO,
Plaintiff,

vs.

EDGAR PHARR, dba.,
Madisonville Cab Service,
5225 Whetsel Avenue, Cincinnati 27, Ohio,
Defendant.

PETITION

(Filed May 2, 1961.)

FIRST CAUSE OF ACTION

Plaintiff says that for the period July 1954-December 1955 the defendant, Edgar Pharr was an employer subject to the Unemployment Compensation Act of Ohio, Sections 4141.01 to 4141.99, inclusive, Revised Code of Ohio; that on the 13th day of May 1960, the Administrator of the Bureau of Unemployment Compensation made a finding against said employer on the amount of contributions, interest, and penalty due from Edgar Pharr for said period, notified defendant of the amount thereof, and ordered the same paid, all pursuant to Section 4141.27, Revised Code of Ohio. Defendant not having paid contributions, interest, and penalty within 10 days after notice thereof, said finding was certified to the Attorney General of Ohio. A

certified copy of said finding marked "Exhibit A" is hereto attached and made a part of this petition as though fully rewritten herein.

Plaintiff says that contributions, interest, and penalty for the period July 1954-December 1955 have been demanded of defendant, have not been paid, and that there is due plaintiff from defendant on account of such finding, the sum of $55.17 with interest from 10/31/54; $70.27 with interest from 1/31/55; $80.82 with interest from 4/30/55; $65.90 with interest from 7/31/55; $56.73 with interest from 10/31/55; $81.09 with interest from 1/30/56; plus forfeitures $41.00. (Total amount claimed on 1st cause of action $450.98 plus interest at the rate of 6% from October 31, 1954.)

STATE OF OHIO
BUREAU OF UNEMPLOYMENT COMPENSATION
CERTIFICATION OF DELINQUENCY

Acct. No. 433-171717-31

Hon. Mark McElroy,
Attorney General, State of Ohio.
Dear Sir:

I, Donald B. Leach, as Administrator of the Bureau of Unemployment Compensation, do hereby certify that the attached Finding and Determination of Contributions Due and Final Notice thereof against Edgar Pharr, dba., Madisonville Cab Service, an employer subject to the unemployment compensation law, is a true and correct copy of the finding which was made against said employer under date

of May 13th, 1960, and mailed to him under date of May 13th, 1960.

I further certify that ten days or more have elapsed since said Finding and Determination was mailed to said employer and that no part of said contributions or interest has been paid, except—(no exceptions)— and the same is now due and owing.

I hereby certify this attached Finding and Determination of Contributions Due for the purpose of having suit brought thereon, pursuant to Section 4141.27, Revised General Code, to make collections of the amount due.

Dated at Columbus, Ohio, this 24th day of May, 1960.

Finding No. 11
Cert. No. 11

/s/ DONALD B. LEACH
Donald B. Leach, Administrator

EXHIBIT "A"

STATE OF OHIO
BUREAU OF UNEMPLOYMENT COMPENSATION
427 Cleveland Ave., Columbus 18, Ohio

No. 11

To EDGAR PHARR, dba.,
Madisonville Cab Service,
5225 Whetsel Ave.,
Cincinnati 27, Ohio

433-1717-17-31

Appendix B

Finding and Determination of Taxable Periods and Amounts of Contribution Due with Interest and Final Notice of Amounts Due with Interest and Order to Pay Same.

After due consideration of all facts presented, investigattion and reports of deputy auditor and the evidence, and pursuant to Section 4141.27, Revised General Code, the Administrator of the Bureau of Unemployment Compensation finds and determines:

FIRST:

That the above named employer has failed to comply with the unemployment compensation law of Ohio and has failed to report and pay contributions or taxes which are due thereunder and as hereinafter more specifically set forth.

SECOND:

That Edgar Pharr, dba., Madisonville Cab Service was an employer subject to the provisions of the unemployment compensation law for the periods hereinafter set forth and that there is due and owing from said employer for said periods the following contributions or taxes, together with interest thereon* until paid from their respective due dates, as herein set forth:

Appendix B

Contribution Period	Contribution Originally Due for Period	Balance of Contribution Due for Period*	Date Due	Date of Payme...	Interest Due on Contribution Paid
Jul-Sept-1954	55.17	55.17	10-31-54		
Oct-Dec-1954	70.27	70.27	1-31-55		
Jul-Dec1954 forfeitures (R.C. 4141.20)	12.55	12.55			
Jan-Mar-1959	80.82	80.82	4-30-55		
Apr-Jan-1955	65.90	65.90	7-31-55		
Jul-Sept-1955	56.73	56.73	10-31-55		
Oct-Dec-1955	81.09	81.09	1-31-56		
Jan-Dec-1955 forfeitures (R.C. 4141.20)	28.45	28.45			
TOTALS		450.98			

* Contribution balances bear interest from their respective due dates as above set forth, until paid. Interest rate is 6%. Any portion of a month is considered a full month.

That the above contributions, together with interest due, are delinquent and that said employer is hereby notified of the amount and ordered to pay the same. That if said amount, together with interest, is not paid within ten days after receiving this notice thereof, the Administrator will certify the same to the Attorney General for collection pursuant to Section 4141.27, Revised General Code.

Dated at Columbus, Ohio, this 13th day of May, 1960.

Mailed to the above employer on May 13th, 1960.

DONALD B. LEACH, Administrator
BUREAU OF UNEMPLOYMENT COMPENSATION
By Donald B. Leach

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Supreme Court, U.S.
FILED
NOV 3 1966
JOHN F. DAVIS, CLERK

No. 595

IN THE

Supreme Court of the United States

October Term, 1966

EDGAR PHARR, d/b/a MADISONVILLE CAB COMPANY,

Petitioner,

vs.

BUREAU OF UNEMPLOYMENT COMPENSATION, STATE OF OHIO,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF OHIO

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IN THE

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No. 595

EDGAR PHARR, d/b/a MADISONVILLE CAB COMPANY,

Petitioner,

vs.

BUREAU OF UNEMPLOYMENT COMPENSATION, STATE OF OHIO,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF OHIO

The petition for Writ of Certiorari filed in this matter does not contain a bona fide statement of grounds for invoking the jurisdiction of this Court nor a bona fide reason for granting of the Writ requested.

Petitioner asserts that it has been deprived of a constitutional right in that the Hamilton County, Ohio Common Pleas Court refused to allow the issue of petitioner's liability for unemployment taxes to be submitted to a jury in a civil action at law against petitioner to collect such taxes. The trial court ruled that the cause could proceed to trial only on the issue of the amount, if any, due, since the petitioner, prior to the filing of the action at law against him under Section 4141.27, Ohio Revised Code, had appealed under Section 4141.26, Ohio Revised Code, to the Franklin County, Ohio Court of Common Pleas, a ruling

of the Bureau of Unemployment Compensation that petitioner owed certain unemployment taxes, that said ruling had been affirmed by said court, and affirmed on appeal to the Franklin County, Ohio Court of Appeals, and a motion to certify overruled by the Supreme Court of Ohio on February 15, 1961. As a consequence petitioner excepted to the ruling, and withdrew his demand for a jury trial. Thereupon the trial court dismissed the jury empaneled in the action.

It is the law of the State of Ohio as expressed by the Ohio Supreme Court in *Quinn, Aud., et al. v. The State, ex rel. Leroy,* 118 Ohio St., 48 that:

> "Material facts or questions which were in issue in a former suit and were there judicially determined by a court of competent jurisdiction are conclusively settled by the judgment therein so far as concerns the parties to that action and persons in privity with them and cannot be again litigated in any future action between the same parties or privies, and this rule also applies not only to what was determined but also to every other question which might properly have been litigated in the case."

The trial court correctly ruled, therefore, under the law controlling in Ohio, that petitioner had no question, respecting his liability for unemployment taxes to submit to a jury. He had been afforded his day in court on that issue, and under the doctrine of Res Judicata could not relitigate the same question again before another forum of the state. He was, however, afforded the opportunity of a jury trial on issues not theretofore presented, namely, the question of the amount due.

Petitioner now contends that not only does Section 4141.27, Ohio Revised Code, provide for such a civil action and trial of the issues as to whether the defendant therein is subject to the act, but the Supreme Court of Ohio has

ruled that the place and manner of presenting such an issue is in a court of law when the alleged employer is sued under the provisions of Section 4141.27, Ohio Revised Code, citing *Iden v. Atkinson, Administrator,* 138 Ohio St. 175 as authority. As a matter of law that case does not stand for the proposition that the issue, if presented under Section 4141.26, Ohio Revised Code, on appeal in a court of law, may again be presented in a court of law when the employer is sued in a civil action under Section 4141.27, Revised Code. In that case no appeal on the issue of liability for unemployment taxes had been taken to a court of law. The court merely affirmed the right of an employer to have the question adjudicated in a court of law if not previously presented or the opportunity to so present it had not been available. As a matter of practice, therefore, petitioner's rights under the Ohio and Federal Constitutions were not abridged, since the issue on which petitioner bases this claim had been decided in prior litigation between the parties.

It is also petitioner's argument that the right to trial by jury guaranteed by the Seventh Amendment is such a fundamental principle of liberty and justice as to be made obligatory upon the states by the Fourteenth Amendment. This court has held repeatedly that the Seventh Amendment right to trial by jury in civil cases is not made applicable to state proceedings as a requirement of due process or as a privilege or immunity of national citizenship under the Fourteenth Amendment. It is applicable to trials in Federal courts only. *Walker v. Sauvient,* 92 U.S. 90; *Maxwell v. Dow,* 176 U.S. 581; *Wagner Electric Mfg. Co. v. Lyndon,* 262 U.S. 226; *Hawkins v. Bleakly,* 243 U.S. 210; *New York C.R.C. v. White,* 243 U.S. 188; *Tuney v. Ohio,* 273 U.S. 510; *Snyder v. Massachusetts,* 291 U.S. 97; *Twining v. New Jersey,* 211 U.S. 78.

Petitioner notes that the Supreme Court has been re-examining in recent years, previous decisions of the Court involving the extent to which certain fundamental rights, safeguarded by the first eight amendments of the Constitution of the United States against federal action, are also safeguarded against state action by the due process of law clause of the Fourteenth Amendment. The Court in *Gideon v. Wainwright,* 375 U.S. 335, quoting Mr. Justice Cardozo, is cited by petitioner to this effect:

> "immunities that are valid as against the federal government by force of the specific pledges of particular amendments have been found to be implicit in the concept of ordered liberty, and thus through the Fourteenth Amendment, become valid as against the states * * *."

The petitioner ignores, however, the complete statement of this thought by Justice Cardozo from the original opinion written by him in *Palko v. Connecticut,* 302 U.S. 319:

> "The line of division may seem to be wavering and broken if there is a hasty catalogue of the cases on the one side and the other. Reflection and analysis will induce a different view. There emerges the perception of a rationalizing principle which gives to discrete instances a proper order and coherence. The right to trial by jury and the immunity from prosecution except as the result of an indictment may have value and importance. Even so, they are not of the very essence of a scheme of ordered liberty. To abolish them is not to violate a 'principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental'; Snyder v. Massachusetts, 291 U.S. p. 105; Brown v. Mississippi, 297 U.S. p. 275; Herbert v. Louisiana, 272 U.S. 312. Few would be so narrow or provincial as to maintain that a fair and enlightened system of justice would be impossible without them."

We submit that the guarantee of the Seventh Amendment does not reflect that essence of a scheme of ordered liberty that would otherwise justify its extension to state action under the due process clause of the Fourteenth Amendment. It has been traditionally recognized by this Court that the impartial decision of factual issues in civil actions may be left as well to an enlightened tribunal as to a jury without offending the sense of justice inherent in the conscience of the people. This indicates that trial by jury in civil cases is not a fundamental principle of justice so essential to the requirements of due process as to be made obligatory to the settled course of judicial proceedings in a state court.

CONCLUSION

Respondent respectfully submits that the foregoing demonstrates that the petitioner's stated basis for invoking the jurisdiction of this Court and stated reasons for granting the writ requested are defective. Therefore, the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

WILLIAM B. SAXBE
Attorney General
BERNARD L. HEFFERNAN
Assistant Attorney General
Attorneys for Respondent.